U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15365639

Date: JUNE 21, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision and remand the matter for further review of the record and issuance of a new decision.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

> who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
>
> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
>
> *Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
>
> *Profession* means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition to the definition of "advance degree" provided at 8 C.F.R. § 204.5(k)(2), the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) provides that a petitioner present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty."

To demonstrate eligibility as an individual of exceptional ability, a petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision

Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

A. Eligibility for the Requested Classification

As stated above, the first step to establishing eligibility for a national interest waiver is demonstrating qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability. The Director concluded that the Petitioner qualified for the underlying visa classification because he "submitted evidence of receiving the foreign equivalent of a U.S. master's degree in information technology management." We also note that the Director's request for evidence stated that because the submitted evidence established that the Petitioner "holds the foreign equivalent of a U.S. master's degree in information technology management . . . USCIS does not need to evaluate whether the [Petitioner] also qualifies as an alien of exceptional ability."

For the reasons discussed below, we withdraw the Director's conclusion that the Petitioner has established that he is an advanced degree professional.

The submitted "Evaluation of Training, Education, and Experience" (evaluation) claims that the Petitioner "obtained a Master of Business Administration and Master of Business Analytics from [the] University [redacted]." However, the submitted documents clearly state that these two extension programs resulted only in a "certificate," with no indication that either of them is a graduate level program that would result in the claimed master's degrees.[4] Further, the evaluator concludes that:

> Considering that a four-year Bachelor's degree [] followed by more than five years of full-time work experience in the field of Information Technology is equivalent to a MS in Information Technology Management, it is my expert opinion that [the Petitioner] with a four-year Bachelor degree, 2 two-year Master degrees and more than 12 years of experience, has no less than the equivalent of a Master of Science in Information Technology Management.

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[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[4] We also note that the Petitioner's resume and the Form ETA-750B, Application for Alien Employment Certification, claim that these certificates are "graduate degrees" and that the Petitioner attested that the form was "true and correct" when he signed it "under penalty of perjury."

Not only does the evaluator inaccurately describe the certificates as master's degrees, he also incorrectly lists the length of the two programs.[5] In addition, the evaluator does not claim to have reviewed any employment letters to establish the Petitioner's work history or experience.[6]

Furthermore, the record does not demonstrate that the Petitioner completed his bachelor's degree program. Although the Petitioner submitted a copy of his diploma from the [redacted] University [redacted] in Brazil which states that he received a bachelor's degree in information systems, the accompanying transcript appears to indicate that the Petitioner did not complete the program. For example, both the "credits to be obtained" section under the "general requirements for course completion" heading and the "credits for completion" section under the "student's status in the course" heading state that 197 credits need to "be obtained" or "complet[ed]." However, the transcript indicates in both sections that the Petitioner has only "obtained" or "accumulated" 181 credits. Neither the Petitioner, nor the evaluator, addresses this discrepancy. We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. *Id.*

The Petitioner must resolve the above inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

In light of the above, the Director should first determine whether the Petitioner has sufficiently demonstrated that he holds the foreign equivalent of a U.S. bachelor's degree. If the Director concludes that the Petitioner has provided independent, objective evidence to establish receipt of such a degree, he should then determine whether the Petitioner has submitted employment letters which establish "at least five years of progressive post-baccalaureate experience in the specialty," as required by the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B)

If the Director concludes that the Petitioner is not an advanced degree professional, he should then determine whether the Petitioner qualifies as an individual of exceptional ability.

B. *Dhanasar* Analysis

Regarding the Petitioner's claims of eligibility under the *Dhanasar* analysis, we agree with the Director's ultimate conclusions that the Petitioner has not meet any of the three prongs.

III. CONCLUSION

For the reasons discussed above, we are remanding the petition for the Director to consider anew whether the Petitioner qualifies for EB-2 classification, the threshold determination in national interest

[5] According to the submitted transcript, the Petitioner began the programs on July 6, 2009 and completed them on June 13, 2010. Although we are unable to determine the exact length of each individual program from the information provided, it is clear that neither program lasted two years.

[6] The job duties listed in the "professional experience" section of the evaluation are taken directly from the Petitioner's resume.

waiver cases. The Director may request any additional evidence considered pertinent to the new determination.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis and entry of a new decision.